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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/680,940	10/10/2000	Michael A. Donkin	03493.87082	9724

7590 03/28/2005

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EXAMINER

AVELLINO, JOSEPH E

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/680,940

Applicant(s)

DONKIN ET AL.

Examiner

Joseph E. Avellino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-28 is/are rejected.
- 7) ☒ Claim(s) 16, 17, 29 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-30 are presented for examination; claims 1, 18, and 19 independent.

Allowable Subject Matter

2. Claims 16, 17, 29, and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not provide for a configuration system wherein if the job is for five or less chassis, giving the job a high priority, and if the job affects five or more chassis, give the job an average priority. It is well known that the priority for a task can be determined based on the number of computer systems affected (i.e. requiring high computational powers from various computing entities), however this would not teach that a priority can be determined from a specific threshold number of systems. This, in combination with the other limitations of the base claim and all intervening claims, render these features allowable if written in independent form.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 10 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 10 and 24 recite the term "HARC" which is not defined in the claim or any claim in the dependence chain. Correction is required. For examination purposes, the term "HARC" is to be construed as a module in a chassis.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5-6, 10, 12, 13, 15, 18-19, 23-26, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by McCormack et al. (USPN 6,360,255) (hereinafter McCormack).

8. Referring to claim 1, McCormack discloses a method of dial platform configuration management, in which said dial platform comprises at multiple chassis (i.e. routers and managed devices), each of said chassis having a plurality of slots

containing a plurality of cards, said cards having at least one modem thereon (the Office takes the term “modem” to be construed as “a device which MODulates a data signal at transmission and DEModulates the signal at reception” such as communication interfaces which must be inherently disclosed in order for network devices 140a-c to be able to communicate on Ethernet protocol networks; col. 4, lines 42-54), comprising the steps of:

- selecting an action including downloading code to at least one chassis (i.e. network devices such as routers, switches, and other backbone devices that guide data communications among clients and servers) (Figure 3B, ref. 310 and related portions of the disclosure);

- choosing a site at which said at least one chassis is located (i.e. select a device/platform Figure 3A, ref. 302);

- selecting at least one chassis at said site (inherent since the software update is chosen for the particular device Figure 3A, ref. 302);

- placing said at least one chassis at said site in a queue for subsequent execution of said selected action (i.e. scheduling) (col. 10, lines 33-42); and

- executing said selected action (col. 11, lines 46-55).

9. Referring to claim 5, McCormack discloses upgrading software code for at least one chassis (Figure 3B, ref. 310, upgrade to version 11.3.2 for device ilab2502).

10. Referring to claims 6 and 10, McCormack discloses selecting a software version to upgrade (i.e. choosing between various versions of the ilab2502 software) (Figure 3A, ref. 304).

11. Referring to claims 12 and 13, McCormack discloses determining a prior for said selected action (i.e. time to execute) selected by a user (col. 10, lines 33-42).

12. Referring to claim 15, McCormack discloses priority is determined by whether said selected action is to be performed in a maintenance window during platform use is at a minimum (i.e. available for maintenance) (col. 10, lines 33-42).

13. Claims 18-19, 23-26, and 28 are rejected for similar reasons as stated above.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

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under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 14, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack.

16. Referring to claim 14, McCormack discloses the invention substantively as described in claim 12. McCormack does not specifically state the priority is determined by how many chassis are selected. "Official Notice" is taken that both the concept and advantages of determining a priority based on the number of chassis selected is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of McCormack to include determining priority of the job by the number of affected chassis in order to increase throughput of the software upgrade by completing small jobs, which do not take as much time and computing power as a large job, thereby increasing throughput and reducing latency for small group specific applications.

17. Claim 27 is rejected for similar reasons as stated above.

Claims 2, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack in view of Aronberg et al. (USPN 5,933,647) (hereinafter Aronberg).

18. Referring to claim 2, McCormack discloses the invention substantively as described in claim 1. McCormack does not specifically disclose editing the queue to change the order in which said actions are performed. In analogous art, Aronberg discloses another method of dial platform management wherein the user is allowed to edit the queue and execute job immediately by using the "NOW" button at job scheduling (Figure 8, col. 6, lines 8-19). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Aronberg with McCormack in order to allow distribution based on any combination of several criteria and also customize individual aspects of a particular application with minimal complexity as supported by Aronberg (col. 2, lines 1-14).

19. Referring to claims 7 and 8, McCormack discloses the invention substantively as described in claim 6. McCormack does not disclose selecting a span type for the chassis. In analogous art, Aronberg discloses another method of dial platform management which discloses selecting a span type for the chassis (the Office takes the term "span type" to be broadly construed as "selecting a group for which the software distribution is to take place" such as conditionals and other situations which must take place in order for the installation to occur) (Figure 9; col. 6, lines 20-38). It would be obvious to a person of ordinary skill in the art at the time the invention was made to

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combine the teaching of Aronberg with McCormack in order to allow distribution based on any combination of several criteria and also customize individual aspects of a particular application with minimal complexity as supported by Aronberg (col. 2, lines 1-14).

20. Referring to claim 9, McCormack-Aronberg disclose the invention as described in claim 8. McCormack-Aronberg further disclose selecting a logging server address (i.e. customer connection server 102) for said at least one chassis (McCormack, col. 14, lines 29-51). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Aronberg with McCormack in order to allow distribution based on any combination of several criteria and also customize individual aspects of a particular application with minimal complexity as supported by Aronberg (col. 2, lines 1-14).

Claims 3, 4, 11, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack in view of Alexander et al. (USPN 6,691,300) (hereinafter Alexander).

21. Referring to claims 3 and 4, McCormack discloses the invention substantively as described in claim 1. McCormack further discloses viewing the status of a software image download job (col. 13, lines 15-20), however does not specifically state viewing the queue to review the order in which actions are performed and viewing active items

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currently being executed in the queue. In analogous art, Alexander discloses another dial platform configuration management system wherein the system allows a user to view the queue 326-338 to review the order in which actions are performed and viewing active items currently being executed 350 in the queue (Figure 3; col. 13, line 52 to col. 14, line 49). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Alexander with McCormack since McCormack discloses allowing user to check the status of a job (col. 13, lines 15-20) however does not state how this is portrayed to the user. This would lead one of ordinary skill in the art to search for methods of portraying software upgrade information to a user, eventually finding Alexander and its novel method of analyzing and displaying the progress of a software upgrade for a network (e.g. abstract).

22. Referring to claim 11, McCormack in view of Alexander disclose the invention substantively as described in claim 3. McCormack does not specifically state viewing the queue according to a time zone. In analogous art, Alexander discloses another dial platform configuration management system wherein the system allows a user to view the queue according to a time zone (the Office takes the term "time zone" to be broadly construed as a region, as controlled by regional servers 102) (Figure 3). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Alexander with McCormack since McCormack discloses allowing user to check the status of a job (col. 13, lines 15-20) however does not state how this is portrayed to the user. This would lead one of ordinary skill in the art to

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search for methods of portraying software upgrade information to a user, eventually finding Alexander and its novel method of analyzing and displaying the progress of a software upgrade for a network (e.g. abstract).

23. Claims 21 and 22 are rejected for similar reasons as stated above.

Conclusion

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

25. Brown et al. (USPN 6,401,238) discloses intelligent deployment of applications to preserve network bandwidth.

26. Krami (USPN 6,493,594) discloses improved software configuration and control management

27. Hubinette (USPN 6,289,511) discloses distributing software in a telecommunications network.

28. Berglund et al. (USPN 6,351,819) discloses heterogeneous system enclosure services connection.

29. Marino et al. (USPN 6,681,391) discloses installing software on a computer system.

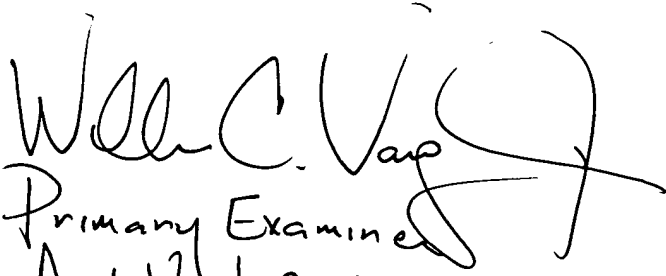
30. Stowe, M. ("Service Management for the Advanced Intelligent Network" IEEE GLOBECOM ©1991, pp. 1667-1671) discloses service management capabilities used to configure AIN services for a technical trial.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JEA
March 8, 2005


Primary Examiner
Art Unit 2143
William C. Vaughn, Jr.